

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RAYMOND J. CERILLI	:	
	:	
v.	:	Case No. 3:14cv1551(AWT)
	:	
CAY, et al.	:	

RULING ON PLAINTIFF'S OBJECTION [Doc. #14]

The plaintiff, Raymond Cerilli, is an inmate currently incarcerated at Garner Correctional Institution in Newtown, Connecticut. He has filed a complaint *pro se* pursuant to 28 U.S.C. § 1915 against defendants Correctional Officers Cay, Opalacz and Pulster, Captain Molden and Lieutenants Darczyn and Roy. All defendants are named in their individual capacities only. On January 15, 2015, the Court denied the plaintiff's motion to proceed *in forma pauperis* as barred under the three strikes provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). See Doc. #11. The plaintiff failed to tender the filing fee as directed. Thus, on March 20, 2015, the Court dismissed the case. See Doc. #12.

Although the plaintiff could have filed a motion for reconsideration of the denial of his motion to proceed *in forma pauperis*, he did not do so. Instead, he has filed an objection

to the dismissal of his case. The Court considers the objection as a motion for reconsideration.

In his objection, the plaintiff contends that the Court was mistaken in the ruling denying *in forma pauperis* status. He contends that he suffers "life threatening injuries," Doc. #14 at 1, and attaches an MRI report from January 2015 to support his contention.¹

A motion for reconsideration must be filed within fourteen days from the filing of the decision from which relief is sought. D. Conn. L. Civ. R. 7(c)1. Although the plaintiff's objection is directed to the dismissal order, he does not challenge the fact that he failed to comply with the order to tender the filing fee, which is the basis for the dismissal of this case. Rather, he seeks reconsideration of the denial of *in forma pauperis* status. A motion for reconsideration of that decision should have been filed no later than January 29, 2015. The plaintiff did not file his objection until March 27, 2015, nearly two months too late.

However, even if the plaintiff had timely filed a motion for reconsideration, relief would have been denied. As the

¹The plaintiff also includes allegations that the Department of Correction and the Court are conspiring to cover-up his injuries and the wrongful conduct of the defendants and to deny him appropriate medical treatment. These last allegations lack any basis in fact. As the complaint has not been served, the Department of Correction has had no involvement in this case and no contact with the Court regarding this matter.

Court explained in the prior ruling, a prisoner barred under the three strikes provision may file an action without prepayment of the filing fee only if he can demonstrate an "imminent danger of serious physical injury." See *Pettus v. Morgenthau*, 554 F.3d 293, 297 (2d Cir. 2009) ("indigent three-strikes prisoner [may] proceed IFP in order to obtain a judicial remedy for an imminent danger"). The plaintiff must show both that (1) the imminent danger of serious physical injury he alleges is fairly traceable to unlawful conduct alleged in the complaint and (2) that a favorable judicial outcome would redress the injury. See *id.* at 296-97. In addition, the danger of imminent harm must be present at the time the complaint is filed. See *id.* at 296. See also *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002) (concluding that the "imminent danger" exception is available "for genuine emergencies," where "time is pressing" and "a threat . . . is real and proximate").

In the ruling denying *in forma pauperis* status, the Court noted that the complaint concerned a motor vehicle accident that occurred four months before the plaintiff filed his complaint. The defendants were all custodial staff who were directly involved in, or immediately responded to, the accident. The allegations concern the plaintiff's contentions that the defendants did not ensure that he received proper medical treatment immediately following the accident. Although the

plaintiff references specific alleged lapses in the medical care provided, no doctors or medical staff are included as defendants because the plaintiff was pursuing those claims in a separate action in state court. The Court concluded that, because the plaintiff is housed at a different correctional facility from the ones referenced in the complaint and no longer has any contact with the defendants, he failed to meet the exception to the three-strikes provision.

The defendants, all custodial staff, have no ability to provide medical treatment to the plaintiff, who is confined at a different correctional facility. The plaintiff has named these defendants only in their individual capacities and seeks only damages from them. The purported imminent danger of serious physical injury relates to the plaintiff's current, allegedly improper, medical treatment. The plaintiff seeks a general injunction regarding current treatment. This request, however, cannot be satisfied by the defendants, who are not medical staff and are located at different correctional facilities. In addition, injunctive relief cannot be provided by the defendants in their individual capacities. Thus, a decision favorable to the plaintiff would not redress these concerns. "To the extent that the plaintiff seeks prospective relief from imminent danger involving his medical condition, that relief can only be sought from those responsible for his ongoing medical treatment."

Nelson v. Chang, No. 08-CV-1261(KAM)(LB), 2009 WL 367576, at *3 (E.D.N.Y. Feb. 10, 2009)(declining to find exception to three-strikes prohibition where inmate sought prospective relief from medical condition from persons who had provided medical care at a correctional facility in which he previously was incarcerated).

Thus, the Court previously concluded, and concludes again, that the plaintiff's allegations fail to demonstrate an imminent danger of serious physical harm and that he does not meet the exception to the three-strikes prohibition.

Conclusion

The plaintiff's objection [**Doc. #14**], which the Court has reviewed as a motion for reconsideration, is **OVERRULED**.

It is so ordered.

Signed this 28th day of July 2015, at Hartford,
Connecticut.

_____/s/AWT_____
Alvin W. Thompson
United States District Judge